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6           UNITED STATES DISTRICT COURT  
7           WESTERN DISTRICT OF WASHINGTON  
8           AT TACOMA

9           SAM B.,

10           Plaintiff,

11           v.

12           COMMISSIONER OF SOCIAL  
13           SECURITY,

14           Defendant.

15           CASE NO. 2:19-CV-00354-DWC

16           ORDER AFFIRMING DEFENDANT'S  
17           DECISION TO DENY BENEFITS

18         Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of  
19         Defendant's denial of his application for disability insurance benefits ("DIB"). Pursuant to 28  
20         U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have  
21         consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

22         After considering the record, the Court concludes Plaintiff has failed to show the  
23         Administrative Law Judge ("ALJ") erred when he found Plaintiff's ankle impairments did not  
24         meet or equal Listing 1.02A. Further, Plaintiff has not shown the ALJ erred in his consideration of  
the medical evidence, Plaintiff's residual functional capacity ("RFC") assessment, or the  
vocational expert's testimony. Accordingly, the decision of the Commissioner of Social Security  
("Commissioner") is affirmed pursuant to sentence four of 42 U.S.C. § 405(g).

## FACTUAL AND PROCEDURAL HISTORY

2 On March 5, 2015, Plaintiff filed an application for DIB, alleging disability as of March 1,  
3 2007. *See* Dkt. 9, Administrative Record (“AR”) 15. The application was denied upon initial  
4 administrative review and on reconsideration. *See* AR 14. A hearing was held before ALJ Eric S.  
5 Basse. *See* AR 46-93. At the hearing, Plaintiff amended his alleged onset date to March 1, 2008.  
6 *See* AR 15, 51-52. On January 22, 2018, the ALJ entered a decision finding Plaintiff not disabled.  
7 AR 15-36. Plaintiff’s request for review of the ALJ’s decision was denied by the Appeals Council,  
8 making the ALJ’s decision the final decision of the Commissioner. *See* AR 1-5, 20 C.F.R. §  
9 404.981, § 416.1481.

10 In the Opening Brief, Plaintiff maintains the ALJ erred by failing to properly: (1) consider  
11 whether Plaintiff met Listing 1.02A; (2) consider the medical opinion evidence; (3) evaluate the  
12 RFC and vocational expert's testimony; and (4) support the decision with the evidence of record.  
13 Dkt. 15.

## **STANDARD OF REVIEW**

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

## **DISCUSSION**

**I. Whether the ALJ erred in failing to find Plaintiff's ankle impairments met Listing 1.02A at Step Three.**

At Step Three of the sequential evaluation process, the ALJ considers whether one or more of the claimant's impairments meets or equals an impairment listed in Appendix 1 to Subpart P of the regulations. 20 C.F.R. § 404.1520(a)(4)(iii). Each Listing sets forth the "symptoms, signs, and

1 laboratory findings” which must be established in order for a claimant’s impairment to meet the  
2 Listing. *Tackett v. Apfel*, 180 F.3d 1094, 1099 (9th Cir. 1999). If a claimant meets or equals a  
3 Listing, the claimant is considered disabled without further inquiry. See 20 C.F.R. § 416.920(d).

4 The burden of proof is on the claimant to establish he meets or equals any of the  
5 impairments in the Listings. See *Tacket*, 180 F.3d at 1098. “A generalized assertion of functional  
6 problems,” however, “is not enough to establish disability at step three.” *Id.* at 1100 (citing 20  
7 C.F.R. § 404.1526). A mental or physical impairment “must result from anatomical, physiological,  
8 or psychological abnormalities which can be shown by medically acceptable clinical and  
9 laboratory diagnostic techniques.” 20 C.F.R. § 404.1508. It must be established by medical  
10 evidence “consisting of signs, symptoms, and laboratory findings.” *Id.*; see also Social Security  
11 Ruling (“SSR”) 96–8p, 1996 WL 374184 \*2 (a step three determination must be made on basis of  
12 medical factors alone). An impairment meets a listed impairment “only when it manifests the  
13 specific findings described in the set of medical criteria for that listed impairment.” SSR 83–19,  
14 1983 WL 31248 \*2.

15 Plaintiff argues the ALJ erred by failing to find Plaintiff’s ankle impairments met or  
16 equaled Listing 1.02A. Dkt. 15, pp. 5-6. Listing 1.02A pertains to major dysfunction of a joint  
17 involving one major peripheral weight-bearing joint resulting in an inability to ambulate  
18 effectively. 20 C.F.R. Part 404, Subpart P, Appendix 1§ 1.02A.

19 Inability to ambulate effectively means an extreme limitation of the ability to walk;  
20 i.e., an impairment(s) that interferes very seriously with the individual’s ability to  
21 independently initiate, sustain, or complete activities. Ineffective ambulation is  
22 defined generally as having insufficient lower extremity functioning (see 1.00J) to  
23 permit independent ambulation without the use of a hand-held assistive device(s)  
24 that limits the functioning of both upper extremities.

20 C.F.R. Part 404, Subp. P, App. 1§ 1.00B(1). Examples of ineffective ambulation include, “the  
21 inability to walk without the use of a walker, two crutches or two canes, the inability to walk a  
22 short distance, or the need to use a cane or crutches to walk a short distance.” 20 C.F.R. Part 404, Subp. P, App. 1§ 1.00B(1).

1 block at a reasonable pace on rough or uneven surfaces, the inability to use standard public  
2 transportation, the inability to carry out routine ambulatory activities.” 20 C.F.R. Part 404, Subp.  
3 P, App. 1§ 1.00B(2).

4 At Step Three, the ALJ found Plaintiff “did not have an impairment or combination of  
5 impairments that met or medically equaled the severity of one of the listed impairments in 20 CFR  
6 Part 404, Subpart P, Appendix 1.” AR 24. The ALJ also provided specific discussion of the  
7 medical evidence and determined Plaintiff’s impairments did not meet or equal the criteria of  
8 Listing 1.02 during the relevant period. AR 24. In making this determination, the ALJ cited  
9 evidence showing Plaintiff has a normal gait. *See* AR 24, 408 (non-antalgic gait, able to perform  
10 heel ambulation), 481 (gait /station within normal limits), AR 687 (arc of full motion, no joint  
11 instability, strength 5/5), 859 (normal gait, can heel and toe walk, although complains of pain).  
12 While not explicitly stated, the ALJ concluded the record supported finding Plaintiff has a normal  
13 gait and, therefore, can ambulate effectively. *See* AR 24. Furthermore, the record contains  
14 additional examinations and opinions showing Plaintiff did not have an extreme limitation in his  
15 ability to walk. *See e.g.* AR 690 (able to walk for 30 minutes), 883 (able to walk three to six hours  
16 in an eight-hour day), 1337 (no evidence of antalgic gait except for lateral abnormality, normal  
17 heel strike, no imbalance with toe and tandem walking, but could not heel walk).

18 Plaintiff cites to one treatment note to support his assertion that the ALJ erred when he  
19 failed to find Plaintiff’s ankle impairment met or equaled Listing 1.02A. *See* Dkt. 15, p. 6. The  
20 cited treatment note shows Plaintiff complained of left ankle pain on December 20, 2012. AR 714.  
21 He stated his pain limited his ability to tolerate walking, standing, or physical activity. AR 714.  
22 The doctor noted ankle instability, decreased range of motion, and abnormal strength and tone. AR  
23 714. The sole treatment note does not, however, show Plaintiff’s ankle impairments result in an  
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1 inability to ambulate effectively, as defined by the Listings. *See* AR 714. For example, the  
2 treatment note does not contain evidence showing Plaintiff cannot independently ambulate  
3 without the use of a hand-held assistive device that limits the functioning of both upper  
4 extremities. *See* AR 714; 20 C.F.R. Part 404, Subp. P, App. 1§ 1.00B(1).

5 Plaintiff has not offered a plausible theory explaining how the evidence shows Plaintiff  
6 meets Listing 1.02A. Plaintiff has also not argued the ALJ's consideration of the evidence was  
7 erroneous. *See* Dkt.15, p. 6. Therefore, Plaintiff failed to show the ALJ erred at Step Three of the  
8 sequential evaluation process when determining Plaintiff's ankle impairments did not meet or  
9 equal Listing 1.02A. *See Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005) (affirming the  
10 district court's finding that the claimant "bears the burden of proving that ... she has an impairment  
11 that meets or equals the criteria of an impairment listed in Appendix 1 of the Commissioner's  
12 regulations"); *Lewis v. Apfel*, 236 F.3d 503, 514 (9th Cir. 2001) (finding the ALJ did not err at Step  
13 Three when the plaintiff offered no theory, plausible or otherwise, as to how his impairments  
14 combined to equal a listed impairment or pointed to evidence showing his combined impairments  
15 equal a listed impairment); *see also Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th  
16 Cir. 1999) ("Where the evidence is susceptible to more than one rational interpretation, it is the  
17 ALJ's conclusion that must be upheld.").

18 **II. Whether the ALJ properly considered the medical evidence.**

19 Plaintiff next contends the ALJ erred by failing to discuss the weight given to medical  
20 records. Dkt. 15, pp. 7-8. Specifically, Plaintiff argues the ALJ failed to properly consider and give  
21 significant weight to medical records showing Plaintiff was having significant ankle issues until  
22 January 2013. *Id.*

1       The ALJ “need not discuss all evidence presented.” *Vincent ex rel. Vincent v. Heckler*,  
2 739 F.3d 1393, 1394-95 (9th Cir. 1984). But, the ALJ “may not reject ‘significant probative  
3 evidence’ without explanation.” *Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995)  
4 (quoting *Vincent*, 739 F.2d at 1395). The “ALJ’s written decision must state reasons for  
5 disregarding [such] evidence.” *Flores*, 49 F.3d at 571. However, “[t]he Ninth Circuit has held  
6 when a treating physician does not place any specific functional limitations on a claimant or  
7 opine a claimant is unable to work, the ALJ need not provide reasons to reject the physician’s  
8 findings.” *Fuge v. Astrue*, 2013 WL 76272, at \*6 (D. Or. Jan. 4, 2013).

9       Here, the ALJ found Plaintiff had a severe impairment of bilateral ankle impairments. AR  
10 18. The ALJ discussed the medical records and medical opinion evidence related to Plaintiff’s  
11 ankle impairments. See AR 28-29. In the RFC, the ALJ limited Plaintiff, in relevant part, to  
12 standing and/or walking for four hours in an eight-hour day. AR 24. The ALJ also found Plaintiff  
13 could not crawl or kneel, and could only occasionally balance, stoop, and crouch. AR 24.

14       Plaintiff argues the medical records related to Plaintiff’s ankle issues should be given  
15 significant weight. Dkt. 15, pp.7-8. Plaintiff, however, does not explain *how* the ALJ’s decision  
16 failed to properly account for the medical evidence. See *id*. Plaintiff also fails to show any harmful  
17 error due to the ALJ’s alleged failure to properly consider medical records showing Plaintiff had  
18 significant ankle issues. See *id*. For example, Plaintiff does not allege the medical records include  
19 functional limitations that were not included in the RFC. Therefore, the Court finds Plaintiff has  
20 not shown the ALJ erred in his consideration of the medical records. See *Shinseki v. Sanders*, 556  
21 U.S. 396, 410 (2009) (finding the plaintiff has the burden of demonstrating there are harmful errors  
22 in the ALJ’s decision); *Valentine v. Commissioner of Social Sec. Admin.*, 574 F.3d 685, 692, n. 2  
23 (9th Cir. 2009) (rejecting “any invitation to find that the ALJ failed to account for [the  
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1 claimant's] injuries in some unspecified way" when the claimant failed to detail what limitations  
2 followed from the evidence beyond those already listed in the RFC); *Crawford v. Colvin*, 2014  
3 WL 2216115, at \*9 (W.D. Wash. May 29, 2014) (finding the plaintiff failed to demonstrate error  
4 when she failed to demonstrate the ALJ's reliance on other evidence and interpretation of the  
5 evidence overall was not rational).

6 **III. Whether the ALJ erred in evaluating the RFC and the vocational expert's  
7 testimony.**

8 Plaintiff argues the ALJ erred in evaluating the RFC because the ALJ did not account for  
9 the medical records showing Plaintiff suffered from significant ankle problems after he had  
10 surgery in 2012 and 2013. Dkt. 15, pp. 8-9.

11 An RFC is "an assessment of an individual's ability to do sustained work-related physical  
12 and mental activities in a work setting on a regular and continuing basis." SSR 96-9p, 1996 WL  
13 374184, at \*1 (1996). An RFC must include an individual's functional limitations or restrictions  
14 and assess his "work-related abilities on a function-by-function basis." *Id.* Furthermore, an RFC  
15 must take into account all of an individual's limitations. *Valentine*, 574 F.3d at 690.

16 In the RFC, the ALJ limited Plaintiff to light work except Plaintiff could only stand and/or  
17 walk for four hours in an eight-hour day, could not crawl or kneel, and could only occasionally  
18 balance, stoop, and crouch. AR 24.<sup>1</sup>

19 Plaintiff contends his ankle impairments impact his ability to climb stairs, ladders, ropes,  
20 and scaffolds, stoop and kneel, and stand for occasional periods. Dkt. 15, p. 8. Yet, Plaintiff cites  
21 to no evidence showing his ankle impairments cause the alleged functional limitations. *See id.*  
22 Plaintiff cites to one medical record that shows Plaintiff had bilateral ankle pain on December  
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24 <sup>1</sup> The RFC contains additional limitations that are not relevant to Plaintiff's argument. *See AR 24.*

1 20, 2012. *See id.*; *see also* AR 714. The treatment note contains a physical examination showing  
2 Plaintiff had decreased range of motion, abnormal strength and tone, and instability in his ankle.  
3 AR 714. The treatment note does not include any functional limitations, nor show Plaintiff is  
4 unable to meet the demands of the RFC. *See AR 714.* As such, Plaintiff has not shown the ALJ  
5 failed to properly evaluate the RFC. *See Overton-Perez v. Berryhill*, 2017 WL 1591870, at \*9  
6 (D. Or. May 1, 2017) (“[o]nly limitations supported by substantial evidence must be incorporated  
7 into the RFC”); *Whitfield v. Colvin*, 2014 WL 907332, at \*7 (E.D. Cal. Mar. 7, 2014), *aff’d*, 609  
8 F. App’x 490 (9th Cir. 2015) (finding the ALJ did not err in consideration of the RFC, in part,  
9 because the plaintiff “point[ed] to no medical opinion in the record that assigns more restrictive  
10 limitations caused by plaintiff’s alleged physical impairments” than assigned in the RFC).

11 Plaintiff also asserts the ALJ improperly relied on the vocational expert’s (“VE”)  
12 testimony because the ALJ did not consider all Plaintiff’s reported symptoms when posing  
13 hypothetical questions to the VE. Dkt. 15, p. 9. Hypothetical questions posed to the VE do not  
14 need to include limitations that the ALJ finds unsupported by the record. *Osenbrock v. Apfel*, 240  
15 F.3d 1157, 1163–65 (9th Cir. 2001); *see Parnell v. Astrue*, 2010 WL 529325, at \*6 (C.D. Cal.  
16 Feb. 12, 2010) (quoting *Osenbrock*, 240 F.3d at 1165) (“an ALJ may limit a hypothetical ‘to those  
17 impairments that are supported by substantial evidence in the record’”).

18 Plaintiff fails to show the RFC does not include all the credible limitations contained in  
19 the record. Further, while Plaintiff states the ALJ did not account for Plaintiff’s reported  
20 symptoms, Plaintiff does not challenge the ALJ’s decision to give less weight to Plaintiff’s  
21 subjective symptom testimony. *See* Dkt. 15. The ALJ posed hypothetical questions to the VE  
22 that accurately reflected the RFC assessment he reached after a thorough and comprehensive  
23 review of the evidence in the record. *See AR 15-36, 84-89.* Therefore, the RFC assessment and  
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1 the hypothetical questions posed to the VE were properly based on the credible functional  
2 limitations contained in the record, and thus both the RFC assessment and the hypothetical  
3 question posed to the VE were proper. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174  
4 (9th Cir. 2008) (an ALJ's RFC assessment only needs to incorporate credible limitations  
5 supported by substantial evidence in the record); *Greger v. Barnhart*, 464 F.3d 968, 973 (9th  
6 Cir. 2006) (the ALJ "is free to accept or reject restrictions in a hypothetical question that are  
7 not supported by substantial evidence"). Accordingly, Plaintiff has not shown the ALJ erred in  
8 his assessment of the RFC or in evaluating the VE's testimony. *See Houghton v. Comm'r Soc.*  
9 *Sec. Admin.*, 493 F. App'x 843, 846 (9th Cir. 2012).<sup>2</sup>

10 CONCLUSION

11 Based on the foregoing reasons, the Court hereby finds the ALJ properly concluded  
12 Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is affirmed pursuant  
13 to sentence four of 42 U.S.C. § 405(g).

14 Dated this 28th day of October, 2019.

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17 David W. Christel  
18 United States Magistrate Judge  
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22 <sup>2</sup> In a conclusory manner, Plaintiff argues the ALJ's decision is not supported by substantial evidence. Dkt.  
23 15, p. 10. Plaintiff requests the Court scrutinize the entire record and interfere with the ALJ's decision. *Id.* Plaintiff,  
24 however, identifies no specific error and fails to point to any portion of the ALJ's decision that is unsupported by  
substantial evidence. *See id.* As such, the Court finds Plaintiff has not shown the ALJ's decision is unsupported by  
substantial evidence.